SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 130

09:38:33 UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DOUG HERZOG
PALO ALTO, CALIFORNIA
FRIDAY, JANUARY 16, 2009

JANUARY 16, 2009

9:40 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF DOUG HERZOG, at WILSON SONSINI GOODRICH & ROSATI, 601 South California, Palo Alto, California pursuant to notice, before me, ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI

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(650) 320-4741 dkramer@wsgr.com;

bvolkmer@wsgr.com

ALSO PRESENT:

Michelena Hallie, MTV Networks

Mark Morril, Viacom

Jan Trudell, Videographer.

---oOo---

09:54:26 A More than five.

09:54:26 Q Okay. More than 100?

09:54:30 A More than 100? Not sure.

09:54:32 Q How often do you view videos on the YouTube service?

09:54:38 A Once or twice a week.

09:54:40 Q Do you view videos on the YouTube service while you're at work?

09:54:47 A Occasionally.

09:54:48 Q While you're at home?

09:54:49 A Occasionally.

09:54:50 Q While you're on the road?

09:54:51 A Occasionally.

09:54:52 Q Why do you use YouTube to view videos as opposed to some other online video sharing service?

09:55:01 MS. KOHLMANN: Objection as to form.

09:55:02 THE WITNESS: I use other video sharing, or I -- I might watch video on the Internet in places other than YouTube.

09:55:14 MR. KRAMER: Q. But why do you continue to use YouTube today, given the existence of this litigation?

09:55:20 MS. KOHLMANN: Objection as to form.

09:55:21 THE WITNESS: I don't know.

09:55:23 MR. KRAMER: Q. Do you find that the YouTube
09:55:29 video service has advantages over other online video
09:55:32 services?
09:55:36 A I find there's a lot of videos there.
09:55:40 Q Any other distinguishing characteristics of
09:55:45 the YouTube service vis-a-vis other online video
09:55:51 sharing services you've used?
09:55:52 A Couldn't say.
09:55:53 Q Okay. Do you consider your use of the
09:55:54 YouTube service to be legitimate?
09:55:56 MS. KOHLMANN: Objection as to form.
09:55:57 You can answer.
09:55:58 THE WITNESS: I -- I do.
09:55:59 MR. KRAMER: Q. For the videos that you've
09:56:04 watched on YouTube, did you consider them to be
09:56:06 infringing any third party's copyrights?
09:56:12 A I wouldn't know.
09:56:12 Q What do you mean you wouldn't know?
09:56:14 A I -- I -- I'm just not that clear on -- I
09:56:16 wouldn't know.
09:56:16 Q Why not?
09:56:17 A I'm not a lawyer. I don't necessarily
09:56:19 understand the ins and outs of copyright infringement.
09:56:25 Q So in order to make a determination as to

09:56:27 whether a video you've watched on the YouTube service
09:56:29 was infringing a third-party's copyrights, you'd need
09:56:34 to be a lawyer?
09:56:35 A I just --
09:56:35 MS. KOHLMANN: Objection to form.
09:56:36 THE WITNESS: -- wouldn't know.
09:56:37 MR. KRAMER: Right.
09:56:38 Q I'm asking you why you wouldn't know.
09:56:40 A Because I would not know.
09:56:40 Q Well, don't you have the ability to tell when
09:56:43 you're looking at a particular video whether that
09:56:46 video is authorized by the copyright holder?
09:56:49 MS. KOHLMANN: Objection as to form.
09:56:50 You can answer.
09:56:51 THE WITNESS: I wouldn't -- I -- I wouldn't
09:56:51 know unless it was my video.
09:56:53 MR. KRAMER: Q. Would you say you're a fan
09:57:06 of the YouTube service, Mr. Herzog?
09:57:09 A Yeah.
09:57:10 Q In fact, sir, you'd say you love YouTube;
09:57:15 right?
09:57:16 MS. KOHLMANN: Objection as to form.
09:57:18 You can answer.
09:57:19 THE WITNESS: I -- I would -- I would not.

10:40:01 MR. KRAMER: Q. What other properties,
10:40:31 Mr. Herzog, would you say your statement holds true
10:40:34 for, that the idea that you go to the store and
10:40:39 purchase DVDs is a different experience than going to
10:40:43 the web and snacking and sharing? Would it hold true
10:40:48 for Daily Show?
10:40:48 A No.
10:40:48 Q Would it hold true for the Colbert Report?
10:40:50 A You know, I don't know. Actually, no.
10:40:51 The Daily Show and Colbert are completely
10:40:52 different types of programs than South Park. So, you
10:40:54 know, I don't know the answer to that. I was speaking
10:40:56 specifically about South Park, and that's what I
10:40:58 believe to be the case in terms of South Park.
10:41:00 Q So do you believe that the availability of
10:41:02 the Colbert Report online has a negative impact on DVD
10:41:06 sales of the program?
10:41:06 MS. KOHLMANN: Objection as to form.
10:41:08 You can answer.
10:41:08 THE WITNESS: Colbert doesn't have a DVD
10:41:12 business of any -- you know, I mean, he -- we put out
10:41:14 DVDs, but it's -- it's a different type of program.
10:41:18 It's a timely, topical program and its value on DVD
10:41:22 is -- is minimal.

10:41:22 MR. KRAMER: How about --

10:41:23 THE WITNESS: -- versus a South Park, which

10:41:24 is something that we hope will live forever.

10:41:26 MR. KRAMER: Q. How about the Daily Show?

10:41:29 A The same thing.

10:41:30 Q Similar to the Colbert Report --

10:41:32 A Yes --

10:41:32 Q -- in that regard?

10:41:33 A -- timely, topical show, and those shows have

10:41:35 an expiration date on them.

10:41:36 Q Do you put out DVDs for Co- -- Daily Show?

10:41:40 A We -- like compilations.

10:41:41 Q And do you think the availability of the

10:41:43 Daily Show online has a positive or negative impact on

10:41:47 DVD sales of those Daily Show compilations?

10:41:54 A Couldn't say.

10:42:12 Q Mr. Herzog, you testified earlier that you

10:42:14 use the YouTube service; right?

10:42:16 A I do.

10:42:16 Q Are you familiar with the -- with content

10:42:18 owners creating channels on the YouTube service?

10:42:22 A I -- yeah, I mean, I -- I -- I feel like I

10:42:25 know -- I've heard about it. Know about it.

10:42:27 Q Hasn't one of your properties at MTV Networks

10:42:31 created a channel for YouTube?

10:42:33 A I don't know.

10:42:33 Q Aren't you aware that Spike TV had a channel

10:42:36 on YouTube?

10:42:37 A No.

10:42:37 Q Do you know whether Spike TV ever posted its

10:42:43 content to YouTube?

10:42:44 A I don't know for sure.

10:42:44 (Document marked Herzog Exhibit 3

10:43:24 for identification.)

10:43:24 MR. KRAMER: Q. Mr. Herzog, what's been

10:43:26 marked as Exhibit 3 to your deposition is a document

10:43:29 that is an e-mail thread produced to us in discovery

10:43:31 by Viacom bearing Bates No. VIA 00518503.

10:43:38 By the way, when I say "Bates No.," I'm

10:43:41 referring to the number on the bottom --

10:43:43 A Got it.

10:43:43 Q -- right-hand corner of the document.

10:43:45 The subject line of the e-mail is, "Blindfold

10:43:49 Kickboxing," and you are CCed on the last in time and

10:43:52 second to last in time e-mails in the thread.

10:43:55 I'll ask you, first, whether you recognize

10:43:57 this document?

10:43:59 A This one, I don't.

Schapiro Exhibit 131

English

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theodoramichaels's Channel Subscribe

theodoramichaels
Joined: November 06, 2008
Last Sign In: 1 day ago
Videos Watched: 458
Subscribers: 2
Channel Views: 437

Name: **Theodora**
Geeky vegetarian rock 'n' roll attorney.
City: **Queens, NYC**
Hometown: **Queens, NYC**
Country: **United States**
Website: **http://www.theodoramichaels.com**

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Views: 23
Comments: 1

Recent Activity

theodoramichaels became friends with JessicaLukes (1 day ago)

theodoramichaels subscribed to slaveboyfilms (1 week ago)

theodoramichaels uploaded a new video (1 month ago)

A Goldfinch!
A goldfinch eating chicory seeds, right in my own backyard! I never saw... more

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Best of The View
I've never seen the show, but that's my Kevin in the red shirt, dancing ... more

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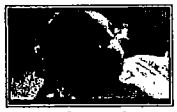

Thelma Garnett in: LOLbaby
8 months ago
151 views
★★★★★
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Thelma dances
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Dramatic Thelma
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Favorites (7) Subscribe To Favorites

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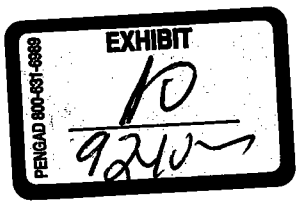
JessicaLukes



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tromakevin

kittyhawkebass

Channel Comments

There are no comments for this user.

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English

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Channel | **Videos** | Favorites | Playlists | Groups | Friends | Subscribers | Subscriptions

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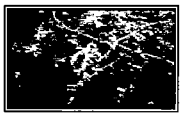

A Goldfinch!

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24 views
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30 views
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Thelma Garnett in: LOLbaby

8 months ago
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★★★★★
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Thelma dances

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Dramatic Thelma

9 months ago
137 views
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Thelma has a bath

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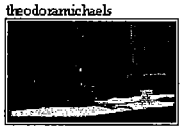

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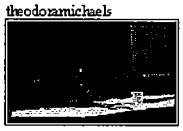

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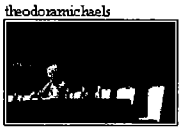

Sean Astin at Dragon*Con, Aug. 3...

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110 views
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theodoramichaels

Report background graphic.

Schapiro Exhibit 132

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs. No. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,

Defendants.

----------X

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF
NICHOLAS SEET/AUDITUDE, INC.
SAN FRANCISCO, CALIFORNIA
TUESDAY, NOVEMBER 24, 2009

JOB NO. 18254

Nicholas Seet San Francisco, CA November 24, 2009

NOVEMBER 24, 2009

9:17 P.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF NICHOLAS SEET, at WILSON, SONSINI, GOODRICH & ROSATI, 1 Market Plaza, Spear Tower, Suite 3400, San Francisco, California, pursuant to notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR License No. 1894.

Nicholas Seet San Francisco, CA November 24, 2009

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nmilaninia@wsgr.com

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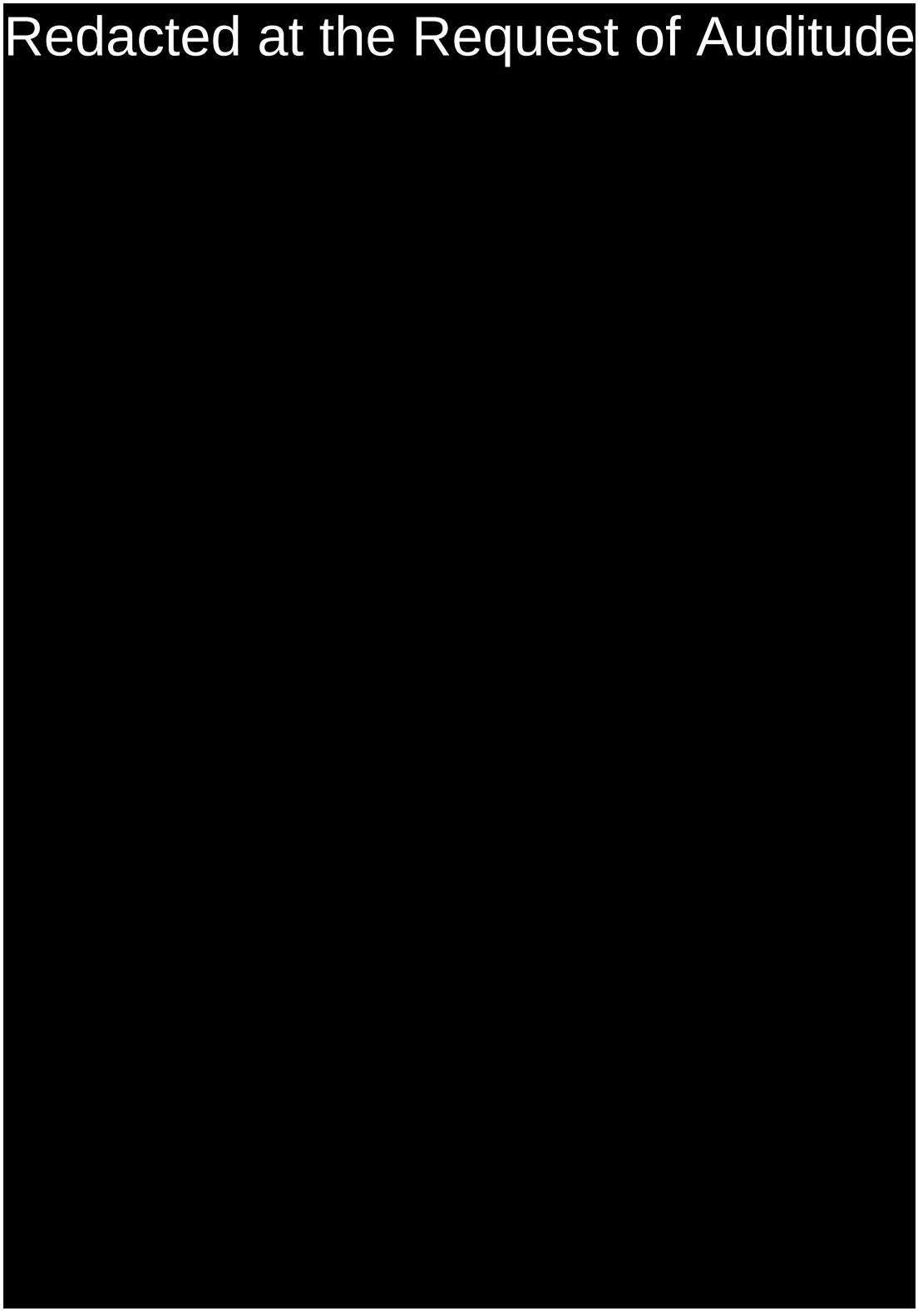
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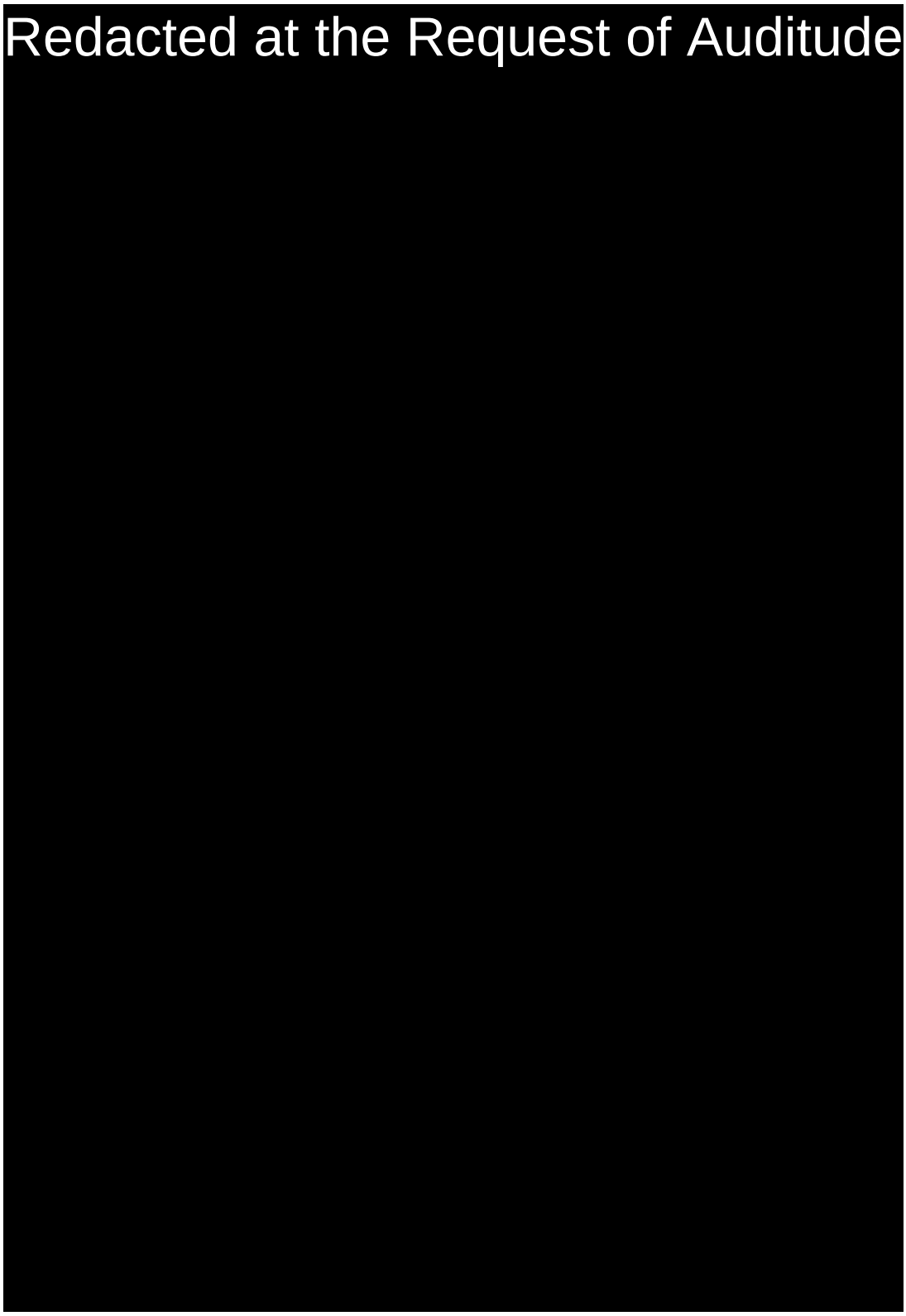
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Schapiro Exhibit 133

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF MIKA SALMI
SAN FRANCISCO, CALIFORNIA
FRIDAY, OCTOBER 16, 2009

JOB NO. 17909

OCTOBER 16, 2009

9:30 a.m.

VIDEOTAPED DEPOSITION OF MIKA SALMI,

WILSON, SONSINI, GOODRICH & ROSATI, LLP,

One Market Street, Spear Street Tower,

San Francisco, California pursuant to notice,

and before, ANDREA M. IGNACIO HOWARD, CLR,

RPR, CRR, CSR License No. 9830.

A P P E A R A N C E S:

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JENNER & BLOCK, LLP

By: SCOTT WILKENS, Esq.

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(202) 639-6000 swilkens@jenner.com

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By: DAVID KRAMER, Esq.

CAROLINE WILSON, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 320-4741 dkramer@wsgr.com

ALSO PRESENT: Michelena Hallie, MTV Networks.

Lou Meadows, Videographer.

---oOo---

10:04:52 analysis, and both from a technical and legal side
10:04:56 that I can't sit here and make an opinion on right
10:04:57 now.
10:04:58 MR. KRAMER: Q. When it launched
10:05:13 AddictingClips, did the service -- sorry. Strike
10:05:15 that.
10:05:15 When the AddictingClips service launched, did
10:05:19 it have human beings screening all videos that users
10:05:22 were uploading to the service for potentially
10:05:24 unauthorized copyrighted material?
10:05:26 A No.
10:05:26 Q Roughly how many videos per day were uploaded
10:05:32 to the service?
10:05:34 A I don't recall.
10:05:35 Q Is it in the hundreds? Thousands? Tens?
10:05:40 A It varied from when it launched to, you know,
10:05:43 a period of time, but...
10:05:45 Q How about at the start?
10:05:48 A Hundreds, I'd guess.
10:05:52 Q You said that AddictingClips didn't want to
10:05:55 have unauthorized copyrighted material appearing on
10:05:57 the service; right?
10:06:04 A I think I said it wasn't a stated intention
10:06:06 of ours to have it up there, but...

SALMI, M.

10:06:08 Q Did -- did -- did AddictingClips want
10:06:10 unauthorized copyrighted material?
10:06:11 A No.
10:06:12 Q Wouldn't one way of keeping that material off
10:06:16 the service have been to have human beings review all
10:06:19 incoming videos and block those that weren't
10:06:22 authorized?
10:06:28 A AddictingClips was set up differently than
10:06:30 Atom Films, which was all about review.
10:06:32 AddictingClips was set up as a user-generated website
10:06:36 according to the legal parameters that our lawyer
10:06:38 provided us.
10:06:39 Q But wouldn't one way of keeping unauthorized
10:06:42 copyrighted material off the service have been to have
10:06:46 human beings screening all of the videos that users
10:06:48 sought to upload and block the upload of those that
10:06:50 were unauthorized copyrighted material?
10:06:52 MR. WILKENS: Objection to the form.
10:06:54 THE WITNESS: That would be one way to do it,
10:06:55 yes.
10:06:56 MR. KRAMER: All right.
10:06:56 Q So when I asked you earlier whether
10:06:59 AddictingClips could have done more to prevent the
10:07:02 upload by users of unauthorized copyrighted materials,

10:07:05 one thing it could have done was employ human beings
10:07:08 to screen all videos uploaded by users and block those
10:07:12 that were unauthorized; right?
10:07:16 A Then it would not have been a user-generated
10:07:19 website the way we had envisioned it to be if it would
10:07:24 have done that. It would also have been
10:07:26 cost-prohibitive to have human beings.
10:07:28 Q Why so?
10:07:29 A That's a lot of clips to...
10:07:32 Q Hundreds of clips a day is a lot of clips,
10:07:35 and it would be cost-prohibitive to have human beings
10:07:38 screen them; right?
10:07:38 MR. WILKENS: Objection to the form.
10:07:39 THE WITNESS: For a small company like ours,
10:07:41 yes.
10:07:41 MR. KRAMER: Okay.
10:07:48 Q Is it reasonable to conclude, based on Atom's
10:07:51 failure to employ human beings to screen videos
10:07:54 uploaded to the service, that Atom wanted users to
10:07:59 upload infringing material to AddictingClips?
10:08:03 MR. WILKENS: Objection to the form; asked
10:08:08 and answered.
10:08:08 THE WITNESS: Yeah, there was not a failure.
10:08:09 It was set up purposely in a certain methodology, so I

10:08:16 would not call it a failure to do either one, your
10:08:20 statement.
10:08:20 MR. KRAMER: Okay.
10:08:21 Q Would it be reasonable to conclude, based on
10:08:23 AddictingClips's decision not to employ human beings
10:08:28 to screen videos uploaded to the service by users,
10:08:31 that AddictingClips wanted users to upload potentially
10:08:35 unauthorized copyrighted material?
10:08:37 A No, that's false. We -- we never -- we never
10:08:42 even had the decision not to have human beings. It
10:08:45 was -- it was always set up a different way.
10:08:48 Q It wouldn't be reasonable to conclude, that
10:08:50 is what you're saying?
10:08:51 A Correct, not reasonable to conclude that.
10:08:54 Q And Atom -- sorry -- AddictingClips -- I
10:08:58 guess it's -- Atom's choice not to have human beings
10:09:04 screening videos uploaded to the service by users
10:09:07 wasn't motivated by a desire to earn advertising
10:09:11 revenue from unauthorized copyrighted material on the
10:09:14 service; right?
10:09:14 MR. WILKENS: Objection to the form.
10:09:17 THE WITNESS: It was strictly done that way
10:09:21 as a -- on the advice of our legal counsel.
10:09:25 MR. KRAMER: Different question than I asked.

Schapiro Exhibit 134

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs. NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,

Defendants.

----------X

VIDEOTAPED DEPOSITION OF JASON WITT

NEW YORK, NEW YORK

THURSDAY, SEPTEMBER 25, 2008

REPORTED BY:
JENNIFER OCAMPO-GUZMAN
JOB NO.: 15651

SEPTEMBER 25, 2008
9:14 a.m.

VIDEOTAPED DEPOSITION OF JASON WITT, held at the offices of WILSON SONSINI GOODRICH & ROSATI, PC, 1301 Avenue of the Americas, New York, New York, pursuant to agreement of parties, before JENNIFER OCAMPO-GUZMAN, a Real-Time Shorthand Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
By: AMY L. TENNEY, Esq.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000 atteney@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
-and-
CHRISTOPHER R. HOWALD, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
650-565-3508 bvolkmer@wsgr.com
650-496-4064 chowald@wsgr.com

ALSO PRESENT:

MTV NETWORKS
By: HEATHER WINDT, ESQ., Senior Counsel

MANUEL ABRUE, Videographer

14:48:50 Q. Right. Do you know if anyone at
14:48:51 Viacom has ever uploaded videos to the
14:48:54 YouTube website?
14:48:55 MS. TENNEY: And I'll restate the
14:48:57 same objections.
14:48:58 A. You know, gosh, I don't know. I
14:49:18 remember Jason Hershorn (phonetic) at one
14:49:18 time, and I'm not sure if he was making a
14:49:20 joke or not, talked about uploading some Bar
14:49:24 Mitzvah videos.
14:49:27 Greg Clayman has uploaded some
14:49:29 videos of his kids and his wife, I think. My
14:49:52 guess is there is more, but those are the
14:49:54 ones I can think of.
14:49:55 Q. So besides Jason Hershorn and Greg
14:50:02 Clayman, you can't think of any other
14:50:04 instances where Viacom employees uploaded
14:50:06 videos to the YouTube website?
14:50:30 A. There may be others, but I can't
14:50:32 recall.
14:50:32 Q. Have you ever viewed video clips on
14:50:41 the YouTube website containing Viacom content
14:50:44 that you believed were not authorized by
14:50:47 Viacom?

Witt

14:50:48 MS. TENNEY: Objection. To the
14:50:51 extent that it calls for a legal
14:50:52 conclusion and also that it's vague.
14:50:56 A. By authorized, I've watched, I've
14:51:07 seen Viacom content on YouTube.
14:51:10 Q. And have you ever seen Viacom
14:51:12 content on YouTube that you thought was
14:51:14 unauthorized?
14:51:14 A. I'm not sure I know what
14:51:16 unauthorized means, in what sense?
14:51:20 Q. Whether Viacom was permitting that
14:51:22 content to be on YouTube?
14:51:25 MS. TENNEY: Objection.
14:51:27 A. I wouldn't know.
14:51:30 Q. What information would you need to
14:51:33 make that determination?
14:51:35 A. Probably someone from legal telling
14:51:38 me if it was -- I mean if it were authorized,
14:51:44 that would be a determination I imagine legal
14:51:48 would be able to answer.
14:51:49 THE WITNESS: Could I take a quick
14:51:51 bathroom break?
14:51:52 MR. VOLKMER: Break, yeah.
14:51:53 THE WITNESS: Yes.

14:51:54 MR. VOLKMER: We can go off the
14:51:56 record.
14:51:56 THE VIDEOGRAPHER: The time is
14:52:02 2:54 p.m. We're going off the record.
14:52:04 (A brief recess was taken.)
15:07:32 THE VIDEOGRAPHER: The time is
15:07:38 3:07 p.m. We're back on the record.
15:07:41 BY MR. VOLKMER:
15:07:41 Q. Before the break you had testified
15:07:44 that you had viewed Viacom content on the
15:07:46 YouTube website; correct?
15:07:46 A. Yes.
15:07:50 Q. And were there ever instances where
15:07:53 you viewed content that had been authorized
15:07:55 by Viacom?
15:07:56 MS. TENNEY: Objection, to the
15:07:57 extent it calls for a legal conclusion.
15:08:02 (Discussion off the record.)
15:08:04 MS. TENNEY: And that it's vague.
15:08:05 A. I suppose it's possible that Viacom
15:08:15 and YouTube had agreed to some kind of a deal
15:08:17 to authorize the content but not that I was
15:08:21 aware of.
15:08:22 Q. Not that you were aware of when you

Schapiro Exhibit 135

From: Mark M. Ishikawa
Sent: Monday, July 10, 2006 7:37 PM
To: Scott Martin
Cc: Alfred Perry; John Salter; Evelyn Espinosa; Arielle Kim
Subject: Anti-Piracy discussion topcs for Wed.

Scott,

Thanks for the invite to the Wednesday meeting. I do believe that we need to sit down with Amy and Nancy to clear the air about the services that they require, and how to get their needs satisfied without having them create their own anti-piracy department. I also want to set Amy's expectations for what we can and cannot do for her. From our conversations and e-mails it would appear that they need some education as to how the DMCA works, and the level of response we can and cannot get from the ISP's in question.

Thx

Mark

==========

Topics:

1) Coordination between Online Marketing and BayTSP

- Advance notice of when and where marketing materials being posted online.
- Copies of material being posed so we can distinguish between authorized and un-authorized materials.
- Post-Mortum of the Transformers project.

2) Determination of takedown policy and procedures

- There seems to be a level of mis-understanding about the services BayTSP provides for Paramount and Viacom by the different groups within the studio. I would like to discuss exactly what we do, and how we do it with the Marketing group so they have a better understanding of the services we provide. I also believe that there is a lack of understanding as to what the Online Piracy program in place at the studio does and its capabilities.
- Determine if there is a different procedure required for the Marketing Department infringements, and define the EXACT procedures that are to be used when the Marketing Department is involved.
- Determine the Anti-Piracy needs of the Marketing Department.

Schapiro Exhibit 136

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-2103
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF ALFRED PERRY
NEW YORK, NEW YORK
DECEMBER 16TH, 2009

JOB NO. 18178

VIDEOTAPED DEPOSITION OF ALFRED PERRY, held at the offices of Mayer Brown, 1675 Broadway, New York, New York, pursuant to notice, before Maureen Ratto, Registered Professional Reporter and Notary Public of the State of New York on December 16, 2009, at 10:08 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ.

1585 Broadway, New York, NY 10036

(202)639-6000

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: JOHN MANCINI, ESQ.

CHRISTINE HERNANDEZ, ESQ

JASON KIRCHNER, ESQ.

1675 Broadway, New York, NY 10019

(212)506-2146

jmancini@mayerbrown.com

MR. WILKENS: Objection to the form of the question. You can answer.

A. As I think I said earlier, Bay was to -- Bay is monitoring for

13:13:56 infringing content. If something is authorized and they have to use some judgment, otherwise it looks like there was discussion that was trying to impose on them this restrictions that

13:14:20 they need to check with Amy's group if there's concerns or questions or perhaps even only take down things that look like they are these sort of clips when requested to do so. That is what

13:14:41 it appears and that is my general recollection where we might have been at that time.

Q. Let me see if I can dive further into this in the next e-mail string

13:14:50 from what we just read, you write to Scott Martin, John Salter and Eric Nancy Derwin-Weiss and Amy Powell, forwarding this e-mail that you had just received from Nancy Derwin-Weiss

13:15:03 "I'm calling BayTSP now" do you recall

that reference?

A. Yes.

Q. A do you recall calling Bates after having received this e-mail from

13:15:13 BayTSP Nancy Derwin-Weiss?

A. I don't recall it but.

Q. Do you recall what would have been said during this conversation?

MR. WILKENS: Objection to the

13:15:21 form. (Check).

A. I don't, but -- I don't recall I don't recall making the call, but...

Q. Okay. In the next e-mail up Nancy Derwin-Weiss replies to you by

13:15:49 saying "I spoke to Mark about the incident." She was referring to Mark Ishikawa, correct?

A. Yes.

Q. Continue with the e-mail, "he

13:16:04 wasn't exactly apologetic about the incident. He said that from their perspective the Zack Braff footage appeared to be nothing more than pirated clips from the movie mashed

13:16:15 together by an individual (who happens

to be Zack Braff). I asked why they didn't put a call into us for before issuing the take down notice since we just had the meeting about the very
13:16:26 issue."

Just to break this down if I may, does this sentence refresh your recollection that as a result of July 2006 meeting part of the new protocols
13:16:39 was that BayTSP was to put a call into the marketing department at Paramount prior to issuing take down notices for Paramount clips? Do you see that sentence?

13:16:55 A. Yes. I do. Not taking down clips -- well, I guess depends what you mean by Paramount clips. If by Paramount clips you define it to mean authorized clips, then if they have some sense
13:17:19 that something is an authorized clip they should put if a call -- or communicate, I'm not sure if it has to be a call, but some sort of communication to Amy's group, to
13:17:32 clarify whether that particular clip of

all those clips that are out there is of concern or authorized.

Q. So is it your text that the instruction that was given at this July meeting was that if they had some sense that it was an unauthorized Paramount clip they should put in a call prior to issuing a take down notice?

A. Yes.

13:17:59 Q. And can you elaborate for me how BayTSP, how it was defined for them what it meant to have a sense as to whether or not it was authorized or not?

13:18:11 MR. WILKENS: Objection to the form.

A. I don't recall the specifics of how that was to be worked out between Amy's team and Bay's team. On the

13:18:32 e-mail it just says they should put in a call before issuing the take down notice to something that appears to be authorized. So it's not clear to me what other directive that might have

13:18:47 been given.

Q. Or what definition was given to that directive?

A. Correct.

Q. Ms. Derwin-Weiss goes onto state, same paragraph, continuing. "He said that they didn't have any reason to believe that the material wasn't pirated as we hadn't given them the trailer in advance in this instance the footage looked pirated. He said they were simply operating under the studio's directive to pull down unauthorized clips and he said he was going to direct BayTSP to stop searching YouTube for a content since it is creating too much of a headache for everyone."

Do you see that reference?

A. Yes.

Q. When you spoke to Mr. Ishikawa yourself which I think you said a moment ago you testified you recall having made the call did he indicate this same concern to you that he was going to direct BayTSP to stop

searching YouTube for Paramount's content because it was quite creating too much of a headache for everyone?

A. I think what I said was I don't recall making the call but I imagine, if I say I'm calling someone now, that I did. But I don't recall specifically making that call. But in this context trying to be responsive, I'm certain I made the call but I don't recall actually making the call.

Q. I understand. All I'm asking, sir, if in reading that sentence and that comment which I think would stick out to you, does that refresh your recollection as to what Mr. Ishikawa said in the conversation that they were going to -- he was going to instruct BayTSP to stop searching YouTube for Paramount content because --

A. He did not tell me that.

Q. He did not tell you that?

A. No.

Q. When you received this e-mail from Mr. Derwin-Weiss on July 25th,

Schapiro Exhibit 137

From: Mark M. Ishikawa
Sent: Wednesday, November 08, 2006 9:19 PM
To: Perry, Alfred - Paramount
Cc: Evelyn Espinosa; Scott Martin; John Salter; Arielle Kim
Subject: RE: Bay TSP - Clips
Importance: High

Al, Scott, & John,

I have no idea what this is about other than the fact that Amy Powel does not like me or my company and is attemting to ruin my relationship with the studios. Nancy sent us links with a "White List" of places the clips are authorized to be on. A normal person would draw the conclusion that since she provided an authorized location list that any other place would be considered infringing, otherwise she should have said leave these clips alone.

All we did was send a clairification e-mail confirming the actions that we believe they have asked us to take. We have *NOT* taken any actions, just asking for clairification, and now we see this e-mail from Nancy. I believe her reactions are unwarrented and unjustified.

If we make a mistake I'm the first one to admit it and make it right. In this case I believe that BayTSP is being treated unfairly. We have been a long time partner with Paramount and this series of reactions is causing me great concern.

I would appreciate it if Scott could give me a call on my cell phone [redacted] to discuss this situation.

Thx

mark

-----Original Message-----
From: Perry, Alfred - Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Wed 11/8/2006 12:14 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Scott Martin; John Salter
Subject: Fw: Bay TSP - Clips

Mark, what is this about?

[Sent wirelessly from my BlackBerry device]

-----Original Message-----
From: Derwin-Weiss, Nancy
To: Martin, Scott; Perry, Alfred - Paramount
CC: Powell, Amy - Paramount
Sent: Wed Nov 08 12:12:06 2006
Subject: FW: Bay TSP - Clips

What will it take for Bay TSP to understand that they are not to initiate takedown actions without our express written approval?

Amy asked us to research other companies who perform competitive services that we can meet with.

Do you have a list of vendors...I will be happy to set up the initial meetings.

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Derwin-Weiss, Nancy
Sent: Wednesday, November 08, 2006 12:03 PM
To: 'Evelyn Espinosa'
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa; Powell, Amy - Paramount; Perry, Alfred - Paramount; Martin, Scott; Magid, Karen - Paramount
Subject: RE: Bay TSP - Clips

If you find the Perfume clip on other sites, please send us the links to the sites and we will decide whether or not to pursue a take down action. Please do not initiate takedown actions without express prior written approval from us.

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Evelyn Espinosa [mailto:evelyn@baytsp.com]
Sent: Wednesday, November 08, 2006 11:38 AM
To: Derwin-Weiss, Nancy
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa
Subject: RE: Bay TSP - Clips

Hi Nancy,

Thanks for heads up for clips below. Just to make sure:

The perfume clip is exclusive and should only be available to view on aintitcool.com.

If we find it on youtube/google video/or any other site we will send a take down notice.

The bee movie clip is ok to stay up regardless of where it is found.

From: Derwin-Weiss, Nancy [mailto:Nancy_Derwin-Weiss@Paramount.com]
Sent: Wednesday, November 08, 2006 11:13 AM
To: Evelyn Espinosa
Cc: Perry, Alfred - Paramount; Powell, Amy - Paramount; Scott Martin; Magid, Karen - Paramount; Tipton, Kristina; Teifeld, Tamar; Mark M. Ishikawa
Subject: Bay TSP - Clips

Hi Evelyn:

Set forth below are links to two approved clips going out this week. Please exclude these clips from your search for pirated content on You Tube and other sites.

Perfume Exclusive Clip – "Don't Touch Anything" – Exclusive to AintItCool.com

http://www.perfumemovie.com/public/video_files/perfume_dont_touch_anything_large.mov

Bee Movie Trailer – wide distribution

http://www.beemovie.com/public/video_files/bee_movie_trailer1_large.mov

I will be sending you links to Freedom Writers clips and Flushed Away Featurettes when they become available.

Feel free to contact me with any questions.

Nancy

Schapiro Exhibit 138

From: Michelena.hallie@mtvn.com
Sent: Tuesday, October 31, 2006 5:15 PM
To: Deana Arizala
Cc: Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman
Subject: Re: Fwd: Viral Internet Marketing Clips

Got it. We should be able to authorize you to search a list soon

-----Original Message-----
From: Deana Arizala <deanaa@baytsp.com>
To: Hallie, Michelena
CC: Morales, Cindy; Mark M. Ishikawa <marki@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Courtney Nieman <courtneyni@baytsp.com>
Sent: Tue Oct 31 12:11:05 2006
Subject: Fwd: Viral Internet Marketing Clips

Michelena,

I'm not sure if you received the email below, so just in case I am going to forward it.

Best Regards,

Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

From: Deana Arizala
Sent: Monday, October 30, 2006 10:09 AM
To: Michelena.hallie@mtvn.com
Cc: Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman
Subject: RE: Viral Internet Marketing Clips

Michelena,

Below is a list of VH1 shows I'm gathered from the links below. I do not have these shows in my list. Please let me know if these titles should be added in Cims.

VH1

The Wendy Williams Experience

Totally Awesome

Flavor of Love

Hogan Knows Best

Freestyle 59

Thanks Michelena.

Best Regards,

Deana Arizala

Deana Arizala

Client Services Manager. BayTSP, Inc

408.341.2365 (direct)

408.341.2300 (voice)

408.341.2399 (fax)

-----Original Message-----
From: Michelena.hallie@mtvn.com
Sent: Friday, October 27, 2006 3:23 PM
To: Deana Arizala
Cc: Morales, Cindy
Subject: FW: Viral Internet Marketing Clips

Is this sufficient information? If so, you can now take down VH1 clips

2 1/2 minutes or over, other than those noted below.

-----Original Message-----

From: Kadetsky, Deborah

Sent: Friday, October 27, 2006 6:07 PM

To: Cheeks, George; Maxwell, Tony

Cc: Wilson, Adam; Hallie, Michelena; Imm, Tina

Subject: RE: Viral Internet Marketing Clips

George, are you able to do your sweep of clips according to who's posted

them?

If that is the case, the clips that we've authorized to be posted are

under the usernames "vh1staff" and "reaction2006"

If you need specific links, here is a list of what we've posted as

approved clips to date:

http://www.youtube.com/watch?v=qVVGT7Rfrvk

http://www.youtube.com/watch?v=jFoQNdwaGys

http://www.youtube.com/watch?v=_5vjI.2stAz0

http://www.youtube.com/watch?v=M-G_NQZb1lI

http://www.youtube.com/watch?v=qvUzUOSbs9Y

http://www.youtube.com/watch?v=xPfTPn-eGKk

http://www.youtube.com/watch?v=3saVMo96328

http://www.youtube.com/watch?v=PjiZqOOAipw

http://www.youtube.com/watch?v=x1ycbHjePjM

http://www.youtube.com/watch?v=hFoCygnKOaA

http://www.youtube.com/watch?v=4CtHP6Ut-zM

http://www.youtube.com/watch?v=Dy9lYAELqlE

http://www.youtube.com/watch?v=kihSHIoW-Tg

http://www.youtube.com/watch?v=yZ1SEDh_JPc

http://www.youtube.com/watch?v=ia_pl6rVg_k

http://www.youtubc.com/watch?v=zlbL-zhMK8k

http://www.youtube.com/watch?v=ynJmXSht2jI

http://www.youtube.com/watch?v=uXnx5QxpIRc

http://www.youtube.com/watch?v=zgl3l1BKpwjQ

http://www.youtube.com/watch?v=pAkp_Hr5rN4

http://www.youtube.com/watch?v=BRbM2qfD08U

http://www.youtube.com/watch?v=QQxyhtYk3CI

Do you have a sense of how frequently we'll be doing this takedown sweep? I want to make sure than any future postings through our current process don't get removed accidentally.

Thanks,

deb

-----Original Message-----

From: Cheeks, George

Sent: Friday, October 27, 2006 1:33 PM

To: Kadetsky, Deborah; Maxwell, Tony

Cc: Wilson, Adam

Subject: Re: Viral Internet Marketing Clips

If you could send a copy directly to Michelina Hallie and copy me that would be great!

-----Original Message-----

From: Kadetsky, Deborah

To: Cheeks, George; Maxwell, Tony

CC: Wilson, Adam

Sent: Fri Oct 27 09:48:26 2006

Subject: RE: Viral Internet Marketing Clips

Hi George,

Did you get my list via Tina Imm? I can send to you directly if not...

Deb

-----Original Message-----

From: Cheeks, George

Sent: Friday, October 27, 2006 8:47 AM

To: Maxwell, Tony

Cc: Wilson, Adam; Kadetsky, Deborah

Subject: Re: Viral Internet Marketing Clips

We need everything that you have seeded thusfar as we are engaging an outside service to send take down notices for full episodes and clips in excess of 2 minutes and 30 seconds and we don't want to have notices sent for content we seeded. That said, if that is too big a task I would at least hit the stuff that we seeded over the past several months.

Thanks.

-----Original Message-----

From: Maxwell, Tony

To: Cheeks, George

CC: Wilson, Adam; Kadetsky, Deborah

Sent: Wed Oct 25 11:10:26 2006

Subject: Viral Internet Marketing Clips

Hello George,

Nigel asked me to follow up with you about your request for a list of viral clips we are currently supplying to websites like youtube.com. Are you looking for a monthly figure or total amount since a certain date.

Please inform.

Many thanks,

Tony

--

Tony Maxwell

VP Vh1 On Air Promotions

212-846-7867

tony.maxwell@vh1staff.com

Schapiro Exhibit 139

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF MICHELENA HALLIE
NEW YORK, NEW YORK
THURSDAY, DECEMBER 10, 2009
JOB NO. 18264

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK
1099 New York Avenue, NW, Suite 900
Washington, D.C. 2000
(202) 639-6000
BY: SCOTT WILKENS, ESQ.
Swilkens@jenner.com

FOR DEFENDANTS, GOOGLE:

WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
BY: MAURA L. REES, ESQ.
Mrees@wsgr.com

ALSO PRESENT:

Carlos King, Videographer

MICHELENA HALLIE

marked as Defendant's Exhibit Hallie-45 for identification as of this date by the Reporter.)

15:50:19 A. Okay.

Q. Can you identify Exhibit 45?

A. It appears to be an E-mail chain between me, various people at BayTSP, and then, ultimately, including

15:50:33 Cindy Morales.

Q. And in the very middle of the first page, there is an E-mail from you responding to a question from Courtney Nieman. Well, first Courtney

15:50:46 Nieman's question at the bottom of the page, it says, "A question came up from the group of people that are approving/declining the video clips. What about commercials/trailers/promos,

15:50:58 should these be approved or declined."

And your response is "If there are commercials/trailers/promos for programs on the list, they should be taken down, unless it is from the

15:51:09 addresses that Cindy sent to you that

are clips that we uploaded ourselves."

And it looks, at the very top, you are asking Cindy if she has

15:51:19 the, "White List."

First of all, what is the White List?

A. I am assuming from this, that it is the list of clips that MTVN

15:51:41 authorized to be uploaded.

Q. And how was the White List compiled?

A. People within MTVN were directed to send any user names or

15:52:07 other identifying information to Cindy Morales and/or Warren Solow's group, depending on the time.

Q. And in your E-mail in the middle of the page that starts, "If

15:52:24 there are commercials/trailers/promos," your instruction is, "they should be taken down unless they are from the addresses Cindy sent to you."

So was the policy, at that

15:52:33 time, that clips that appeared to be

commercials, trailers or promos should be taken down if they were not uploaded by Viacom or someone affiliated with
15:52:45 Viacom?

A. That would appear to be correct. If we hadn't authorized their upload, they should be taken down.

MR. WILKENS: Can we take
15:53:04 another, really quick, break?

MS. REES: Sure.

MR. WILKENS: Thanks.

THE VIDEOGRAPHER: The time is 3:53 p.m. and we are off the
15:53:15 record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 3:58 p.m. and we are back on
15:58:11 the record.

BY MS. REES:

MS. REES: Exhibit 46.

(Whereupon, the aforementioned documents, VIA
15:58:18 11788096 and VIA 11787096, were

January '07 than it became in April of '07.

Q. And do you have any recollection of whether that's how the policy evolved, at least between these two dates?

A. I don't.

Q. Did the difference in policy about whether to takedown or leave up commercials and advertising clips for MTVN programming, did it have to do with the fact that January 2007 was before the mass takedown and Viacom wanted to take down as many clips as possible, whereas April 2007 was after the mass takedown and there was no longer that goal?

MR. WILKENS: Objection to the form.

A. I don't recall that being the case. I recall all of these decisions, as I think the documents will back up, were evolving in part of a legal analysis.

MS. REES: Exhibit 47.

(Whereupon, the aforementioned document, BayTSP 004295197, was marked as Defendant's Exhibit Hallie-47 for identification as of this date by the Reporter.)

A. Okay.

16:04:13 Q. Can you identify Exhibit 47?

A. It is an E-mail from Courtney Nieman to Travis Hill with copies to various people, including me.

Q. And is this the list of

16:04:26 account names that was described in a previous E-mail as the White List?

A. It -- judging from the timing, that E-mail that you are referring to was January 3rd and this

16:04:49 is January 31st, so it is possible that it is.

Q. And this was -- the purpose of giving this list to BayTSP was so that BayTSP would know not to take down

16:05:08 videos that Viacom had posted to

YouTube under the account names listed in Exhibit 47?

A. Well, that they not take

16:05:19 down clips that Viacom had authorized to be posted. I don't know if it was Viacom itself or agents of Viacom.

Q. In the early 2007 timeframe, were you familiar with a marketing firm

16:05:41 that Viacom was using called Fanscape?

A. I have heard of Fanscape. I don't remember when I first heard of it.

Q. Do you know why Fanscape is

16:05:52 not on this list? Because Fanscape was posting videos on behalf of Viacom at this time, right?

MR. WILKENS: Objection to the form of the question.

16:05:59 A. I don't recall. I recall hearing the name, Fanscape. I don't even remember in what context.

Q. Looking at this list now, is it your belief that this list is

16:06:15 incomplete, that even as of January 31,

2007, there are quite a few more authorized clips that appear on this list?

16:06:24 A. I don't know.

MS. REES: Exhibit 48.

(Whereupon, the aforementioned documents, VIA 16669294 through '298, were marked

16:06:56 as Defendant's Exhibit Hallie-48 for identification as of this date by the Reporter.)

A. Okay.

Q. Can you identify Exhibit 48?

16:10:10 A. It is an E-mail chain that starts between the various people, apparently, of Paramount Pictures. Then Al Perry forwards it to Mark Morril, Scott Martin and myself,

16:10:39 copying Rebecca Prentice. I respond and Mike Fricklas appears to respond.

Q. In the second page, there appears to be a question from Paramount; "Can you clarify Paramount's

16:10:57 position on dealing with YouTube at a